

#### ARTICLE 1. NAME OF AGREEMENT

This Agreement shall be known as the Atlantic Brazil Express Agreement (the "ABX Agreement", the "Agreement" or "ABX").

#### ARTICLE 2. PURPOSE OF AGREEMENT

The purpose of this Agreement is to enable the Lines to provide efficient ocean common carrier services with greater cost effectiveness and operational efficiency in the Trade (as hereinafter described).

#### ARTICLE 3. PARTIES TO AGREEMENT

The parties hereto are:

1. CMA CGM, S.A. ("CMA CGM")  
4, Quai D'Arenc  
13002 Marseilles  
France

2. A.P. Moller-Maersk A/S trading as Maersk Line ("ML")<sup>1</sup>  
50 Esplanaden  
1098 Copenhagen K  
Denmark

Deleted: P&O Nedlloyd Limited/P&O Nedlloyd B.V. (as one party) ¶  
... ("PONL") ¶  
... Beagle House ¶  
... Braham Street ¶  
... London E1 8EP United Kingdom

CMA CGM and ML shall collectively be referred to as Lines and each individually as a Line.

Deleted: PONL

<sup>1</sup> ML is the successor in interest to P&O Nedlloyd Limited/P&O Nedlloyd B.V. (acting as one party) pursuant to a Novation Agreement entered into between the parties on [Insert Date]

The above-mentioned capacity of 1900 TEU at 13.5 metric tons average per TEU or any such lower capacity as may be agreed shall be referred to in this Agreement as the Standard Capacity for the specific Vessel and shall be used for the determination of the Lines Allocations pursuant to Article 6.4.B.3.hereafter.

Notwithstanding the aforementioned, Parties may, subject to mutual agreement, operate vessels with a lower capacity at 13.5 tons than the Standard Capacity and use such mutually agreed lower Capacity in the determination of the Lines Allocations pursuant to Article 6.4 B.3 hereafter.

The Lines will notify the FMC of any change in the size of the vessels deployed, but such changes shall not require an amendment to the Agreement.

Lines will consult each other when appropriate if there is any intention to upgrade coverage of the Trade. Subject to the aforementioned consultation, there shall be no restriction on either Line enhancing its coverage of the Trade by way of upgrading or otherwise changing other existing services or by adding new services or making other arrangements with other Lines.

#### 6.2 Provision of Vessels

A. ML shall provide three vessels and CMA CGM shall provide two vessels in the service under this Agreement.

Deleted: PONL

B. Either Line may substitute a Vessel or Vessels provided that:

- (a) Its classification, speed, technical compatibility, capacity and any other relevant data comply with the required minimum characteristics.
- (b) The total number of Vessels in the Service remains unchanged, and the Service and sailing schedule remains unchanged.

The above-mentioned capacity of 1900 TEU at 13.5 metric tons average per TEU or any such lower capacity as may be agreed shall be referred to in this Agreement as the Standard Capacity for the specific Vessel and shall be used for the determination of the Lines Allocations pursuant to Article 6.4.B.3.hereafter.

Notwithstanding the aforementioned, Parties may, subject to mutual agreement, operate vessels with a lower capacity at 13.5 tons than the Standard Capacity and use such mutually agreed lower Capacity in the determination of the Lines Allocations pursuant to Article 6.4 B.3 hereafter.

The Lines will notify the FMC of any change in the size of the vessels deployed, but such changes shall not require an amendment to the Agreement.

Lines will consult each other when appropriate if there is any intention to upgrade coverage of the Trade. Subject to the aforementioned consultation, there shall be no restriction on either Line enhancing its coverage of the Trade by way of upgrading or otherwise changing other existing services or by adding new services or making other arrangements with other Lines.

#### 6.2 Provision of Vessels

A. ML shall provide three vessels and CMA CGM shall provide two vessels in the service under this Agreement.

Deleted: PONL

B. Either Line may substitute a Vessel or Vessels provided that:

(a) Its classification, speed, technical compatibility, capacity and any other relevant data comply with the required minimum characteristics.

(b) The total number of Vessels in the Service remains unchanged, and the Service and sailing schedule remains unchanged.

1
Deleted: Original
Formatted: Superscript
Deleted: After the phase-in period, t

B. The Slot Allocations to each Line shall be calculated based on:-

1. Each Line shall be entitled to that percentage of the Standard Capacity of all Vessels deployed in the Trade that reflects the capacity of the Vessels such Line provides in the Trade based upon the agreed Standard Capacity for each Vessel, unless otherwise agreed.
2. On individual sailings the Line providing the Vessel shall guarantee the availability of the Slot and deadweight allocation to the other Line even if this means a reduction in his own allocations, unless otherwise agreed.
3. Lines further agree that the main principle of the agreement is that the Lines exchange space and deadweight based on the tonnage deployment of each Line, based on the Standard Capacity of each Vessel (unless otherwise agreed), so that the space and deadweight entitlement is equivalent to the Slots (based on space and deadweight) contributed by each Line.
4. The Line operating the Vessel shall be entitled to utilize any capacity in excess of the Standard Capacity on the Vessel.

C All slots exchanged on a structural basis shall be regarded as taken on a used/not used basis round voyage.

D The Line not providing the Vessel will be entitled to use its allocation of space on the Vessel up to its guaranteed Slot Allocation or its allocation of deadweight whichever is reached first. However, the Line not providing the Vessel is authorised to charter additional slots above its allocation from the Line providing such vessel in accordance with Articles 6.5.C and 6.6.

E Each Line shall receive on each Vessel, an allocation of reefer plugs, or, if applicable, minimum 20' or maximum 40' capacity in the ratio of the actual provision of any capacity by each Line over the total fleet.

6.5 Use of Slots

- A. Each Line shall be entitled to use its allocation without any geographical restrictions regarding the origin or destination of the

cargo. There shall be no priorities for either full, empty, wayport/interport or breakbulk cargo. Overall schedule integrity not to be compromised.

B. A Line requiring additional Slots should first approach the other Line to ascertain whether they have unused Slots to sell. If however the other Line is unable to fulfill the requirement or if there is insufficient time to consult with the other Line without losing the opportunity to carry cargo, then Slots may be acquired from other services on an *ad hoc* basis in accordance with applicable regulatory requirements.

C. Unused Slots within a Line's allocation may be sold or sub-chartered *ad hoc* to any vessel operating common carrier (V.O.C.C.) in accordance with applicable regulatory requirements, always provided that there is prior consultation with the other Line and that the other Line has had first refusal of such unused Slots. Slots purchased or sold *ad hoc* between the Lines under this clause shall be on a used only voyage leg basis and shall be paid for as determined under Clause 6.6 below.

Deleted:

D. Lines may jointly sell Slots on vessels deployed under this Agreement to a third party vessel operating common carrier, subject to meeting all applicable regulatory requirements.

E.(1) IN RELATION TO ANY THIRD PARTIES NOT INCLUDING FULLY OWNED SUBSIDIARIES: No Line shall assign its rights, including its rights to utilize the Slots or subcharter such Container Slots, transfer or delegate its duties as per this Agreement in any way to any other person or entity without the prior written consent of the other Line.

(2) FULLY OWNED SUBSIDIARIES: No Line shall assign its rights or transfer or delegate its duties under this Agreement to a fully owned subsidiary without the prior written consent of the other Line, which shall not be unreasonably withheld. Notwithstanding the foregoing, ML may subcharter space to Mercosul Line for carriage of cargo in the non-United States portions of the Trade and ML may subcharter space to P&O Nedlloyd Limited during the period of transition resulting from ML's acquisition of P&O Nedlloyd.

Deleted: P&O Nedlloyd

F. In the event that a Vessel Operator is able to load more than the Standard Capacity of a particular Vessel as a result of the conditions appertaining to an individual voyage then the Vessel Operator may but shall not be obliged to offer such additional space to the other Line. If such space is taken up by the other Line, then it shall

Deleted: ¶  
¶



C. Each Line will arrange for direct invoicing with terminal/stevedore for its own Containers and have its own stevedoring agreement and each Line shall pay stevedoring and terminal expenses and assessments/royalties attributable to its cargo as well as any husbanding costs for its vessels.

Deleted: ¶

D. For the purpose of this Agreement, Common Terminal Charges (such as but not restricted to overtime, idle time, waiting time, extra labor if volumes (full and empty units) handled in each port.

Deleted: ¶

6.11 Disclaimer of partnership

This Agreement is not intended to create a partnership or joint liability under any jurisdiction.

ARTICLE 7. DELEGATION OF AUTHORITY

A. The following individuals shall have the authority to file this Agreement and any modifications thereto with the Federal Maritime Commission as well as the authority to delegate the same:

1. Any authorized officer or representative of a Line
2. Legal counsel for each Line.

ARTICLE 8. MEMBERSHIP AND WITHDRAWAL

A. Additional ocean common carriers may become parties to this Agreement upon the unanimous consent of the Lines. Notwithstanding the foregoing, CMA CGM agrees that; if and when ML and Mercosul Line choose to do so, subject to meeting applicable regulatory requirements, Mercosul Line may become associated to ML provided this will not affect CMA CGM Vessel Provision and Slot Allocation. In such case, both companies (ML and MERCOSUL) will be acting jointly and severally as one party to this Agreement.

Deleted: PONL

Deleted: PONL

Deleted: P

Deleted: ONL

B. If at any time during the term of this Agreement there shall be a change in control or material change in ownership of a Line (for purposes of this provision the "Affected Line") and any other Line is of the opinion that such change is likely to materially prejudice the cohesion or viability of the Service, then such other Line may within three months of the coming into effect of such change give not less than

ARTICLE 10. EFFECTIVE DATE, PHASE IN PERIOD, DURATION AND TERMINATION

A. Amendment 1 to this Agreement shall be effective on the date it becomes effective under the Shipping Act of 1984, as amended.

Deleted: This Agreement

Deleted:

Deleted:

B. Intentionally left blank.

Deleted: or on the date of sailing of the first PONL vessel to sail on the Service pursuant to the terms of this Agreement and in particular Article 10(B)(1) below, whichever is later. ¶

C. Either Line may withdraw from the Agreement upon six months' prior written notice to the other Line provided that such notice shall not be given until the Agreement has been effective for twelve (12) months from May 20, 2005. Notwithstanding the foregoing, the earliest date on which termination may become effective shall be after completion of the roundtrip voyage of the last Vessel in the sixteenth (16<sup>th</sup>) cycle starting with the first voyage to sail on or after May 20, 2005.

Deleted: Subject to the aforementioned, the arrangements for the commencement of this Agreement shall be as follows: ¶

D. This Agreement may be terminated at any time upon mutual agreement of the Lines.

¶  
(1) PONL intends to deploy two Vessels in the Service during March and April, 2005. The third PONL Vessel will be deployed by June, 2005, but depending on availability may be deployed prior thereto. ¶

E. In the event of a termination the Lines shall give prompt written notice to the FMC.

¶  
(2) CMA CGM intends to deploy two Vessels in the Service by June, 2005. Depending on availability one Vessel may be deployed prior thereto. ¶

¶  
(3) The first date on which both Parties have vessels operating in the Service shall be referred to as the Key Date. ¶

¶  
(4) On or after the Key Date space will be exchanged or chartered between the parties on principles to be agreed. Once all five vessels have been introduced space will be allocated on the basis set out in Article 6 above. ¶

¶  
(5) Prior to the Key Date PONL may charter space to CMA CGM, if ¶  
... required by it, and on terms to be agreed.

Deleted: the Key Date

Deleted: the Key Date

SIGNATURE PAGE

In witness whereof, the Lines have executed this Agreement by their authorized representative.

**CMA CGM, S.A.**

By: \_\_\_\_\_  
Name: Neal M. Mayer  
Title: Attorney-in-Fact  
Date:

**P&O Nedlloyd Limited/P&O Nedlloyd B.V.** (acting as one party)

Deleted: 1  
1

By: \_\_\_\_\_  
Name: Neal M. Mayer  
Title: Attorney-in-Fact  
Date:

Deleted: . . 1  
1  
....

**A.P. Moller-Maersk A/S trading as Maersk Line**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Formatted: Font: Not Bold

**A.P. Moller-Maersk A/S trading as Maersk Line**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_